

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 491 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MANUSING BABUSING RATHOD

Versus

COMMISSIONER OF POLICE

Appearance:

MS MITABEN R TALREJA for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 13/07/98

ORAL JUDGEMENT

The petitioner in this petition under Article 226 of the Constitution of India, has challenged the legality and validity of the order of detention dated 31.12.1997 passed by the Police Commissioner, Ahmedabad city under sec. 3(1) of the Gujarat Prevention of ANti Social Activities Act, 1985, whereby the petitioner has been branded as bootlegger within the meaning of sec. 2(b) of the Act.

IN the grounds of detention supplied to the petitioner, the detaining authority has placed reliance on three prohibition cases registered against the petitioner. Out of which, one case is pending for trial and two cases are at the investigation stage. Besides this prohibition cases, a reliance is also placed on the statement of four witnesses for the alleged incidents dated 20.12.1997 and 12.12.1997, wherein the concerned witnesses are beaten by the petitioner on the ground that the witnesses are the informant of the police and that the concerned witnesses have refused to store the liquor of the petitioner. It is alleged that when the concerned witnesses were beaten, many people gathered and they started running helter and skelter when the petitioner ran towards them with open knife and an atmosphere of terror and fear was created and even tempo of life was disturbed. In view of this materials, the detaining authority was of the view that the petitioner being a bootlegger and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, the detention order is necessary.

This petition is required to be allowed on the basis of the decision of the Supreme Court in Piyush Kantilal Mehta vs. Commissioner of Police, Ahmedabad city, AIR 1989 SC 491 on similar allegations made against the detenu in that case has held that the offences alleged against the detenu in the order of detention and also the allegations made by the witnesses could not be said to have created any feeling of insecurity or panic or terror among the members of the public of the area giving rise to the question of maintenance of public order. The order of detention could not therefore be upheld. In view of this decision, it is not possible for me to uphold the order of detention in the present case. The allegations made against the petitioner by the witnesses are minor incidents of beating by the petitioner and which could not be said to create feeling of insecurity among the general public. IN view of this, the order of detention is vitiated.

In the instant case, assuming that the allegations made against the petitioner is accepted on its face value, it is not possible to hold that the petitioner is involved in the activities for the breach of public order. Consequently, the satisfaction recorded by the detaining authority that the petitioner is a

bootlegger and with a view to preventing him from acting in any manner prejudicial to the maintenance of the public order, the detention of the petitioner is necessary is not genuine, and, therefore, the order of detention vitiates.

In the result, this petition is allowed. The impugned order dated 31.12.1997 is set aside. The petitioner is ordered to be released forthwith, if he is not required for any other lawful reason. Rule made absolute. At the request of the learned advocate for the petitioner, writ of this order be sent to the Central Jail, Surat.
